



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:)
) PDS Docket 14-02
The Complaint of Pacific Data Systems,)
Inc. [PDS] Regarding Interconnection)
Agreement Dispute with Teleguam)
Holdings LLC-PDS Request for Fiber)
Layout Maps)

ORDER

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Findings of Fact and Conclusions of Law issued by the Administrative Law Judge ["ALJ"] Frederick J. Horecky on September 23, 2014, which is made *Attachment A* hereto.¹ Therein ALJ Horecky addresses issues raised in Pacific Data Systems, Inc.'s ["PDS"] July 10, 2014 Complaint ["the Complaint"] against TeleGuam Holdings LLC ["GTA"].²

On September 28, 2010, GTA and PDS entered into an Interconnection Agreement ["ICA"].³ The ICA was approved by the PUC on October 29, 2010 pursuant to 47 U.S.C. §252.⁴

In its Complaint, PDS raised various issues concerning the failure of GTA to provide PDS with Fiber Layout Maps. PDS alleged that GTA violated the Dispute Resolution provisions of the ICA, as well as the provision requiring GTA to provide PDS with such maps (Section 8.2.19.1 of the PDS-GTA ICA Network Elements Attachment). A hearing was conducted before ALJ Horecky on September 3, 2014, at which time submissions, testimony, evidence and argument were presented by the parties and considered by ALJ Horecky.⁵ Subsequent to the hearing, ALJ Horecky issued his Findings of Fact and Conclusions of Law (Attachment A). Therein, the ALJ makes various recommendations to the PUC pursuant to Interconnection Implementation Rule 4(e)(9).

¹ Findings of Fact and Conclusions of Law issued by ALJ Frederick J. Horecky on September 23, 2014, *Attachment A* hereto (hereinafter referred to as "ALJ Findings and Conclusions").

² PDS Complaint against Teleguam Holdings LLC, filed July 10, 2014 in PDS Docket 14-02.

³ Agreement by and between PDS and GTA Telecom (September 28, 2006).

⁴ PUC Order, GTA Docket 10-08, issued October 29, 2010.

⁵ ALJ Findings and Conclusions, pg. 1.

ALJ Horecky finds that GTA had a duty pursuant to Section 8.2.19.1 of the Network Elements Attachment of the PDS-GTA ICA to timely produce the GTA Fiber Layout Maps. PDS is entitled to the timely production of such maps and has demonstrated a need for such maps to protect its ability to interconnect with the facilities of the Incumbent Local Exchange Carrier, GTA. Although ALJ Horecky understood GTA's desire to submit the PDS request to federal authorities under the review procedures of the Security Agreement, he finds that the seven month delay in the provision of the Maps to PDS was unreasonable and untimely. Rule 5(c)(1)(v) in the IIRs precludes a telecommunication carrier from unreasonably refusing to disclose, in a timely manner, all information necessary to achieve interconnection. In this case, GTA did eventually, on July 11, 2014, disclose the Fiber Layout Maps to PDS notwithstanding the fact that there had been no federal approval under the Security Agreement.

Based upon the record, ALJ found that GTA has an explicit duty in the ICA to provide the Fiber Layout Maps to PDS. Since the issue of whether the Security Agreement provides a justification for non-disclosure of such information required under the ICA or under federal regulation could arise again in the future, the ALJ recommends that the PUC establish a governing rule or principle for this issue. The ALJ recommends that the PUC make a determination that the review requirements of the Security Agreement do not in any matter abrogate, affect, restrict, diminish or limit the duty of GTA to provide Fiber Layout Maps to PDS under the ICA. In fact, Appendix A to the Security Agreement states: "Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation." 47 C.F.R. §51.307(e) provides that an incumbent LEC such as GTA "shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section."

The ALJ also finds that after PDS filed its formal Notice of Dispute on April 28, 2014, the representatives of PDS and GTA were required, pursuant to Section 14 of the ICA, to meet at least once within 60 days after the date of PDS written notice "in an attempt to reach a good faith resolution of the dispute." Although PDS made numerous requests in an attempt to schedule a time, place and date for such meeting, GTA did not respond to PDS' May 27, 2014 request for a Dispute Resolution meeting. Under Section 14.1 of the ICA, the failure by one party to meet with the other party within the 60 day dispute resolution period is rebuttable evidence of a party's failure to meet its good faith obligations to negotiate the dispute.

The ALJ concluded as follows:

“... GTA has failed to act in good faith by failing to meet with PDS within the 60 day dispute resolution period to negotiate the dispute concerning Fiber Layout Maps. GTA also failed to fully disclose, in a timely manner, the Fiber Layout Maps. PDS is entitled to the production of such maps pursuant to Section 8.2.19.1 of the PDS-GTA Interconnection Agreement (ICA) Network Elements Attachment. A delay by GTA for a seven month period in disclosing such Fiber Layout Maps is a violation of its duty under federal regulation to provide technical information about the incumbent LEC’s network facilities sufficient to allow PDS to achieve access to unbundled network elements. PDS was delayed in its ability to implement and provide competitive telecommunications services. These actions constitute violations of IIR 4(e), 5(a), and 5(c)(1)(v), and 47 C.F.R. §51.307(e).”

PUC is required to issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator [ALJ] within ten (10) days after the recommendation has been filed.⁶ Having considered the record of the proceedings herein, the pleadings of the parties, and the Findings of Fact and Conclusions of Law issued by the ALJ on September 23, 2014, and good cause appearing, the Guam Public Utilities Commission hereby ORDERS as follows:

1. The Findings of Fact and Conclusions of Law issued by the ALJ on September 23, 2014 are hereby adopted and approved.
2. The ALJ is authorized to notice and conduct a hearing for the purpose of determining and recommending to the PUC whether attorney’s fees should be assessed against GTA and, if so, in what amount.
3. The PUC hereby determines that the review requirements of the Security Agreement between GTA and the federal authorities do not in any manner, abrogate, affect, restrict, diminish, or limit the duty of GTA to provide Fiber Layout Maps to PDS under the ICA, or other information required to be provided under the ICA or federal regulation.
4. GTA is ordered to fully comply with the information disclosure requirements under the ICA and federal regulation.

⁶ IIR 4(h)(10).

5. GTA is required to pay the PUC's regulatory expenses pursuant to Amended Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES). Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 25th day of September, 2014.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Peter Montinola
Commissioner

Michael A. Pangelinan
Commissioner

Andrew L. Niven
Commissioner

Filomena M. Cantoria
Commissioner